IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.745 OF 2005

Municipal Corporation of
Gr.Mumbai Appellant

Vs.

Juhu Vile Parle Development Co-op.
Housing Society Respondent

Mr.J.Reis with Ms.Geeta Joglekar i/b. Mr. R.A. Malandkar for appellant.

Mr.Janak Dwarkadas with Mr.Thakkar for respondent.

CORAM: B.H.MARLAPALLE,J.
July 12, 2005.

ORAL ORDER:

1. Heard Mr.Reis, the learned counsel for the appellant - Municipal Corporation and Mr.Dwarkadas, the learned Senior Counsel for the respondent - Co-operative Housing Society. By the impugned order dated 5-7-2005 the learned Judge of the City Civil Court at Mumbai has directed the Notice of Motion moved in S.C.Suit No.2554 of 2005 to be registered and made it returnable on 2-9-2005. The ad-interim injunction in terms of prayer clause (a) was also granted in the notice of motion.

2. The appellant-Corporation has invited public tenders for redevelopment of Dr.R.N.Cooper Hospital

and the last date for submission of the tender was initially 8-7-2005 but the same has been now extended. It appears that the tender is for leasing out about 50 per cent of the land to develop and run a private hospital. In lieu thereof the private party shall have to construct a new 520 bedded fully furnished hospital building with ancillary structures as per the Corporation's designs and drawing and hand it over to the Corporation. The respondent filed S.C.Suit No.2554 of 2005 and prayed for an injunction against the Corporation from alienating the suit property i.e. the land admeasuring about 64,136 square yards from Plot Nos.U-10, U-11 and U-12 mainly on the ground that the ownership of the suit land has not yet been transferred from the plaintiffs to the defendants though the defendant-Corporation is in possession of the said land for more than forty years.

3. The trial Court noted, prima facie, that unless the ownership is transferred it would not be permissible for the Corporation to alienate the land to a third party. Mr.Reis has referred to the provisions of Section 90 of the Mumbai Municipal Corporation Act, 1888, the correspondence between the

parties right from 1961 to 1-7-2004 as well as a decision of this Court in the case of M/s. Jalan Trading Co. Pvt. Ltd. v. State of Maharashtra reported in **AIR 1971 BOMBAY 196** and submitted that the trial Court fell in error in granting ad-interim injunction in terms of prayer clause (a). It was submitted by Mr.Reis that as far as the suit land is concerned the Corporation did not owe any money by way of consideration to the plaintiff-Society and the dues payable in respect of plot No.A/6 taken over in 1968 cannot be mixed with the rights of the Corporation over the suit land. All these issues can be more appropriately gone into by the trial Court while hearing the notice of motion which has been made returnable on 2-9-2005. The defendant is a public body and by the ad-interim order no irreparable loss is likely to be caused for the immediate purpose and, therefore, it would be expedient that the notice of motion is decided on its own merits within a fixed period more so because the ad-interim order operates against the Corporation.

4. By leaving the contentions of the respective parties open, it is directed that the pending Notice of Motion in S.C.Suit No.2554 of 2005 in which the

impugned order has been passed be heard and decided as per law, as expeditiously as possible and in any case before 31st October 2005. The pleadings between the parties shall be completed by the next returnable date i.e. 2-9-2005.

5. The appeal is disposed off in terms of the above directions.

6. Writ to go to the trial Court forthwith.

7. Certified copy is expedited.

(B.H.MARLAPALLE,J.)